

Minister of Transport



Ministre des Transports

Ottawa, Canada K1A 0N5

JUL '08 2019

Mr. Marc Brazeau
President and Chief Executive Officer
Railway Association of Canada
99 Bank Street, Suite 901
Ottawa, Ontario
K1P 6B9

Dear Mr. Brazeau:

I am writing with regards to Ministerial Order (MO) 18-01, issued on December 20, 2018, in accordance with subsection 19(1) of the *Railway Safety Act* (RSA).

As I have previously stated, the Government of Canada is committed to the timely adoption and promotion of safe operating practices for railway companies and their employees. In particular, we all recognize that fatigue can severely affect human performance and ultimately compromise railway safety. That is why I instructed railway companies to revise the *Work/Rest Rules for Railway Operating Employees* (Work/Rest Rules), to ensure that they reflect the latest science and fatigue management practices.

I have considered your proposed rules and must inform you that I am very disappointed with your overall submission. Therefore, your submission is not approved, as it clearly did not address the fatigue-related risks identified in the Ministerial Order. The Notices of Refusal are attached.

In particular, I find all eight elements of fatigue discussed in the order to be deficient, and in some cases, not addressed at all. Your submissions fail to treat fatigue as an issue that impacts all people equally regardless of the work they are performing and ignores fatigue science with respect to maximum hours of work, rest periods and split duty periods.

I want to emphasize that I take the issue of fatigue in the rail industry seriously and am confident that a multilayered approach to dealing with its associated risks is the best way forward. Your member companies are well positioned to propose rules that both respect fatigue science and take into account operational realities. I am therefore prepared to allow your member companies the opportunity to reconsider your position and propose further rules that fully address, at a minimum, the eight elements described in MO 18-01, by November 1, 2019.

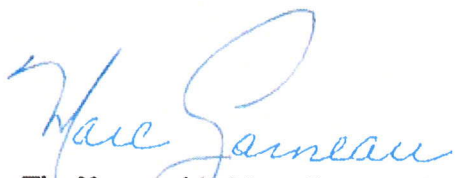
In order to ensure a successful result, please find in Annex A, additional information on Transport Canada's expectation with regards to rules and limits for all eight fatigue-related elements included in the original MO. I have instructed my officials to continue their dialogue with you and to offer additional insight, as required.

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I am expecting that the work associated with the development of these rules will be undertaken as expeditiously as possible and will result in an acceptable submission, which will permanently address the issue of railway employee fatigue. It is expected that your new submission will be filed with Transport Canada by November 1, 2019. If not, I will pursue alternative means to achieve this result, including the development of rules or regulations.

Should you have any questions, I invite you to contact Ms. Brigitte Diogo, Director General, Rail Safety at (613) 998-8697 or brigitte.diogo@tc.gc.ca.

Yours sincerely,



The Honourable Marc Garneau, P.C., M.P.
Minister of Transport

Enclosures

c.c.:	Mr. G. Doherty, TCRC-MWED	Mr. L. Couture, IBEW	Mr. M. Piché, USW
	Mr. C. Crabtree, ATU	Mr. R. Scardelletti, TCIUSB	Mr. K. Russell, IAMAW
	Mr. D. Ashley, TCRC	Mr. B. Snow, UNIFOR	Mr. R. Vaillancourt, TUT

Annex A –Rules and Limits

The following elements shall be applied to all classes of service, for both scheduled and unscheduled employees.

ELEMENT	RULES AND LIMITS
Maximum Duty Period	<ul style="list-style-type: none"> The available duty time hours provide a range of hours of work available, depending on the time of day the shift starts, ranging from: <ul style="list-style-type: none"> 12 hours if the shift starts on or between 07:00 and 12:59; 11 hours if the shift starts on or between 13:00 and 23:59; and 10 hours if the shift starts on or between 24:00 and 06:59. <p><u>Note:</u> All hours spent working for the company, regardless of whether the task is operational or administrative, will be counted towards the available hours of work.</p>
Split Duty	<ul style="list-style-type: none"> If rail companies provide operating employees with suitable accommodations, the total duty period of the split shift may exceed the normally prescribed maximum duty period by the following amount of time: <ul style="list-style-type: none"> 100% of the duration of the break that is provided to the employee during the period beginning at 24:00 and ending at 05:59; 50% of the duration of the break that is provided to the employee during the period beginning at 06:00 and ending at 23:59; and in the case of an unforeseen operational circumstance, 50% of the duration of the break that is provided to the employee in the case of the replanning of a duty period after it has begun. If rail companies do not provide operating employees with suitable accommodations, the total duty period may not exceed the normally prescribed maximum duty period. Where a suitable accommodation is available, the time between the beginning of the operating employee's first duty period and the end of the last duty period may not exceed 17 hours in a 24 hour period.
Minimum Rest Period	<ul style="list-style-type: none"> Operating employees will be given sufficient time for rest when at home (12 hours) and away from home terminal (10 hours). This time includes time spent commuting to and from the place of work, as well as the necessary time required for hygiene, nutrition and life requirements.
Deadheading	<ul style="list-style-type: none"> Time spent deadheading from the home terminal to the place of work will count as part of the duty period. Whereas time spent commuting after the shift has terminated back to the home terminal or between away from home terminals shall be accounted for and the time added to the subsequent rest period.
Maximum Cumulative Time on Duty	<ul style="list-style-type: none"> The maximum number of available working hours per week, month and annually will be: <ul style="list-style-type: none"> 60 hours in any consecutive 7 days; 192 hours in any 28 consecutive days; and 2, 200 hours in any 365 consecutive days.
Minimum Time Free from Work	<ul style="list-style-type: none"> Operating employees will have an extended period of time free from work that encompasses two consecutive nights at home every 7 day period, where a local night's rest is defined as a rest period of at least 9 hours, between 22:00 and 08:00.
Advance Notice of Schedule	<ul style="list-style-type: none"> Employees will be provided with their schedule a minimum of 96 hours in advance of their shift start, in order to provide sufficient time to plan adequate rest.

Annex A –Rules and Limits

Fatigue Management Plan	<ul style="list-style-type: none"> • A railway company shall establish and implement a fatigue management plan (FMP) that includes a description of: <ul style="list-style-type: none"> ○ The scope of the plan, including information on the applicability of the FMP with regards to employees and positions within the company; ○ The objectives of the plan, including its intended purpose with regards to the reduction of fatigue, the reduction of fatigue related incidents and accidents, the improvement of alertness, and the overall improvement of the well-being of railway employees; ○ Targets regarding each stated objective, along with details on how these targets will be evaluated; ○ A description of the type of operations conducted by the railway company, including size, complexity, traffic density, traffic patterns; and ○ A description of the characteristics of the territory on which the company operates, including geographic considerations. • The FMP shall detail who has overall responsibility for its development and modification, and who will be involved in the development and updating of the FMP, including at a minimum representatives from management, union representatives, and employees. • The FMP shall clearly define the specific responsibilities of employees who have a role in managing fatigue, which includes but is not limited to the following: <ul style="list-style-type: none"> ○ Operating employees; ○ Supervisors; ○ Manager of operations; ○ Safety manager; ○ Training department; ○ Persons performing risk assessment; ○ Persons responsible for scheduling and call-out processes; ○ Persons responsible for incident and accident investigation; ○ Labor representatives. • The FMP shall contain: <ul style="list-style-type: none"> ○ A description of how personnel responsible for scheduling will access up-to-date information about employees' duty hours; ○ Scheduling practices and call out procedures that take into consideration the current and latest principles of fatigue science; ○ A description of the measures that will be taken by the railway organization to make schedules predictable, in particular with regards to the duty period start times; ○ Measures to address unscheduled employees (spareboard employees), including details on the call out procedures, limits to standby time, and impact on subsequent rest period; ○ Procedure for employees to declare themselves fit-for-duty at the start of their duty period; ○ A description on how time away from home terminals is managed and controlled; ○ Details on how the railway company will manage the safety of their employees while they are deadheading at the end of a shift, which includes considerations regarding the safe operation of motor vehicles for the purpose of commuting back home;
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Annex A – Rules and Limits

Fatigue Management Plan	<ul style="list-style-type: none"> ○ A description of rest accommodations available to employees to use when they are not able to return home for rest, including details regarding the circumstances when they are to be used, where they are located, and the process to obtain access to these accommodations; and ○ A description of the methods and strategies operating employees may use to sustain alertness, in addition to the requirements and limitations detailed in the Work/Rest Rules for Operating Employees. • The FMP shall describe the process for ensuring that operating employees are not fatigued during emergency situations, when the duty period limits may need to be exceeded, and specifically identify what measures will be taken if an employee is fatigued. • The FMP shall clearly describe: <ul style="list-style-type: none"> ○ A system for any employee to report fatigue, both self-reporting and reporting fatigue in others, that includes: <ul style="list-style-type: none"> ▪ a description of the circumstances in which a report may be made; and ▪ who to report it to, and how. ○ Incident and accident investigation procedures that consider, at a minimum, the following: <ul style="list-style-type: none"> ▪ Time of day of the incident or accident; ▪ When the relevant shift started; ▪ How many hours into the shift the accident occurred; ▪ How many hours had the relevant employees been awake at the time of the incident; and ▪ The hours of work and rest of the relevant employees in the past 24 hours and in the past week. ○ The process for communicating the results of investigations to the affected employees. • The FMP shall identify methods of sharing information with stakeholders about fatigue management and prevention with other railway organizations, in order to make improvements industry wide in the area of fatigue. • A railway company shall, no later than 90 days following the coming into force of these rules, revise their Fatigue Management Plan (FMP) in accordance with these rules. • The railway company shall: <ul style="list-style-type: none"> ○ Make their revised FMP available to Transport Canada upon request; ○ Whenever subsequent changes are made to the FMP, notify Transport Canada no later than 30 days following revision of the FMP; ○ Update their FMP: <ul style="list-style-type: none"> ▪ At a minimum, every 2 years; or ▪ At any time, as a result of operational changes, an accident or incident, or as part of the company's continuous improvement process. ○ Report a non-compliance with the FMP to Transport Canada as soon as possible, but not later than 48 hours following the non-compliance, including a description of the non-compliance and why it occurred.
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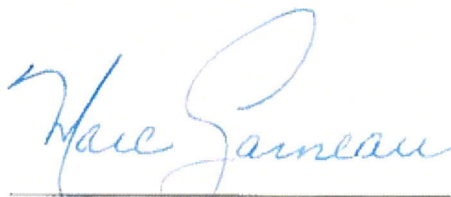
REFUSAL OF RULES PURSUANT TO PARAGRAPH 19(4)(B) OF THE
RAILWAY SAFETY ACT, R.S. 1985, C. 32 (4th SUPP.)

Pursuant to the provisions of paragraph 19(1)(a) of the *Railway Safety Act* (RSA), which gives the Minister the authority to order a railway company to formulate rules respecting any matter referred to in subsection 18(1) or (2.1) or to revise its rules respecting that matter, railway companies were ordered to revise the *Work/Rest Rules for Railway Operating Employees*. The revised rules were to reflect the latest fatigue science and fatigue management practices and address, at a minimum, 8 elements, including length of duty and rest periods, as well as deadheading.

Pursuant to the provisions of paragraph 19(1)(b) of the RSA, the revised rules were to be filed with the Minister on or before May 19, 2019. In this regard, on May 17, 2019, the Railway Association of Canada (RAC), on behalf of their member companies listed in Appendix A, filed the *Rules Governing Hours of Work for Freight Railway Operating Employees*.

Subsection 19(4) of the RSA gives the Minister the authority to approve or refuse approval of proposed rules or revisions filed under sections 19 or 20.

In accordance with paragraph 19(4)(b), I, Marc Garneau, P.C., M.P., Minister of Transport, hereby refuse to approve the RAC's proposed *Rules Governing Hours of Work for Freight Railway Operating Employees* as I am of the opinion that they would not be conducive to safe railway operations by the companies listed in Appendix A. As indicated in my covering letter, your submission fails to adequately address all eight elements included in Ministerial Order 18-01.



Minister of Transport

JUL 08 2019

Date

APPENDIX A

Canadian National Railway Company
Chemin de fer Québec North Shore & Labrador
Central Maine and Quebec Railway Canada Inc.
CSX Transportation, Inc.
Eastern Maine Railway Company
Goderich-Exeter Railway Company Limited
Hudson Bay Railway Company
Kettle Falls International Railway Company
Knob Lake and Timmins Railway Company Inc.
National Railroad Passenger Corporation (Amtrak)
Nipissing Central Railway
Norfolk Southern Railway Company
Pacific & Arctic Railway Navigation, British Columbia & Yukon Railway, British Yukon
Railway dba White Pass & Yukon Route Railroad (WP&YR)
RaiLink Canada Ltd.*
St. Lawrence & Atlantic Railroad (Québec) Inc.
The Essex Terminal Railway Company
The Toronto Terminals Railway Company Limited
Transport Ferroviaire Tshiuetin Inc. (Tshiuetin Rail Transportation Inc.)
Union Pacific Railroad Company
VIA Rail Canada Inc.

*RaiLink Canada Ltd. Power of Attorney covers two (2) railways; the Ottawa Valley Railway and the Southern Ontario Railway.

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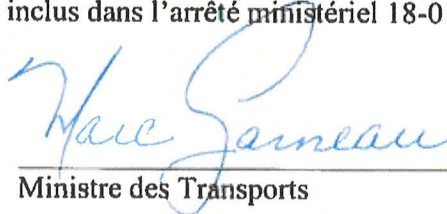
**REFUS DES RÈGLES CONFORMÉMENT AU PARAGRAPHE 19(4) DE LA
LOI SUR LA SÉCURITÉ FERROVIAIRE, L.R. (1985), CH. 32 (4^e SUPPL.)**

Conformément aux dispositions du paragraphe 19(1) de la *Loi sur la sécurité ferroviaire* (LSF), qui confèrent au ministre le pouvoir d'enjoindre à une compagnie de chemin de fer soit d'établir des règles concernant l'un des domaines visés aux paragraphes 18(1) ou 18(2.1), soit de modifier de telles règles, les compagnies de chemin de fer devaient modifier les *Règles relatives au temps de travail et de repos du personnel d'exploitation ferroviaire*. Les règles modifiées devaient refléter les dernières pratiques en matière de science de la fatigue et de gestion de la fatigue et, au minimum, faire état de huit (8) éléments, incluant la durée d'une période de service et d'une période de repos, et également les déplacements haut le pied.

Toujours conformément aux dispositions du paragraphe 19(1), les règles modifiées devaient être déposées auprès de la ministre au plus tard le 19 mai 2019. L'Association des chemins de fer du Canada (ACFC) a ainsi déposé, le 17 mai 2019, les *Règles relatives au temps de travail du personnel d'exploitation des chemins de fer marchandises* au nom de ses compagnies membres énumérées à l'annexe A.

Le paragraphe 19(4) de la LSF confère au ministre le pouvoir d'approuver ou de refuser les règles proposées ou modifiées en vertu des articles 19 et 20.

Conformément au paragraphe 19(4), je, Marc Garneau, C.P., député, Ministre des Transports, refuse par la présente d'approuver les *Règles relatives au temps de travail du personnel d'exploitation des chemins de fer marchandises* proposées par l'ACFC, car à mon avis, ces règles ne contribuerait pas à la sécurité de l'exploitation ferroviaire des compagnies énumérées à l'annexe A. Tel qu'indiqué dans ma lettre d'accompagnement, votre soumission ne traite pas de façon satisfaisante les huit éléments inclus dans l'arrêté ministériel 18-01.


Ministre des Transports

08 2019

Date

ANNEXE A

Canadian National Railway Company
Chemin de fer Québec North Shore & Labrador
Central Maine and Quebec Railway Canada Inc.
CSX Transportation, Inc.
Eastern Maine Railway Company
Goderich-Exeter Railway Company Limited
Hudson Bay Railway Company
Kettle Falls International Railway Company
Knob Lake and Timmins Railway Company Inc.
National Railroad Passenger Corporation (Amtrak)
Nipissing Central Railway
Norfolk Southern Railway Company
Pacific & Arctic Railway Navigation, British Columbia & Yukon Railway, British Yukon
Railway dba White Pass & Yukon Route Railroad (WP&YR)
RaiLink Canada Ltd.*
St. Lawrence & Atlantic Railroad (Québec) Inc.
The Essex Terminal Railway Company
The Toronto Terminals Railway Company Limited
Transport Ferroviaire Tshiuetin Inc. (Tshiuetin Rail Transportation Inc.)
Union Pacific Railroad Company
VIA Rail Canada Inc.

NOTE : La procuration de RaiLink Canada Ltd.* couvre deux (2) compagnies de chemin de fer, soit Ottawa Valley Railway et Southern Ontario Railway.